

**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, *et al*,<sup>1</sup>  
Debtors.

Chapter 11

Case No. 18-23538-RDD  
Jointly Administered

**DECLARATION OF KIMBERLY BLACK IN SUPPORT OF  
TRANSFORM SR BRANDS LLC'S REPLY IN FURTHER SUPPORT OF ITS  
MOTION TO ENFORCE ORDER (I) APPROVING THE ASSET PURCHASE  
AGREEMENT AMONG SELLERS AND BUYER, (II) AUTHORIZING THE SALE  
OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS,  
CLAIMS, INTERESTS AND ENCUMBRANCES, (III) AUTHORIZING THE  
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS, AND  
LEASES IN CONNECTION THEREWITH AND (IV) GRANTING RELATED RELIEF**

I, Kimberly Black, declare under penalty of perjury as follows:

1. I am an attorney duly admitted to practice in the State of New York, and I am an associate of the law firm Cleary Gottlieb Steen & Hamilton LLP ("Cleary Gottlieb"), counsel for

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

Transform SR Brands LLC and certain of its affiliates (collectively “Transform”). I respectfully submit this declaration in connection with *Transform SR Brands LLC’s Reply in Further Support of its Motion to Enforce Order (I) Approving the Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts, and Leases in Connection Therewith and (IV) Granting Related Relief*, filed contemporaneously herewith.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Motion Procedures for the Law Division under Cook County General Administrative Order effective December 2020.

3. Attached hereto as Exhibit 2 is a true and correct copy of an email from Julie Pustilnik to Judge O’Hara, dated June 3, 2021.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 22, 2021 in New York, New York.

/s/ Kimberly Black

Kimberly Black

CLEARY GOTTlieb STEEN & HAMILTON LLP

One Liberty Plaza

New York, New York 10006

Telephone: (212) 225-2000

Facsimile: (212) 225-3999

**Exhibit 1**

**Law Division – MOTION SECTION (22<sup>nd</sup> Floor)**

ALL MOTIONS NEED TO BE E-FILED AND **NOT** SPINDLED

**DO NOT CHOOSE A HEARING DATE FOR THE MOTION**

**ANY MOTIONS E-FILED BEFORE 7/2/2020 AND SCHEDULED FOR PRESENTMENT BETWEEN 3/17/2020 AND 12/31/2020 WILL NEED TO BE RE-NOTICED AND RESCHEDULED**

All documents sent to the Judge's calendar email, other than draft orders, must be submitted in PDF format

All emails to any Law Division Motion Calendar must include the following:

1. Identify the type of motion (emergency, routine, regular, etc.)
2. Case name & number
3. Description of the substance of the motion (special process, vacate defaults, leave to appear, amend a pleading (specifying what is being amended));
4. Identify each document submitted as a separate attachment (that are not included as an exhibit to the motion)
  - a. Special process order, dismissal order, amended complaint order, etc.
  - b. Generic descriptions of documents (order, or agreed order) will be rejected
5. Email addresses of all counsel of record, parties not in default, and self-represented parties

All motions and notices must be e-filed before submitting them to the court

All motions must include email addresses of moving counsel

All notices of motions must contain email addresses of all counsel of record, parties not in default, and self-represented parties

**Proposed orders submitted with any motion must not be e-filed or attached to the motion as an exhibit**

**Emergency motions**

Emergency motions are to be submitted to the assigned motion judge between 8:45 am – 9:30 am Monday – Friday

- Emergency motions submitted after that time period will be sent to the Motion Section Emergency Duty Judge

Types of Emergency Motions include, but are not limited to:

- Adding parties or filing pleadings (additional party complaints), prior to the expiration of an impending statute of limitations

- Requests for protective order for preservation of evidence
- Requests for relief, which, if not granted, will cause irreparable harm

Notice, service, and e-filing of emergency motions must comply with the above filing and service procedures

Emergency motions will be reviewed by the motion/emergency judge. If it does not meet the requirements for an emergency, it will be stricken

Motions to extend discovery dates are not valid emergency motions

Routine Motions

Routine motions are to be submitted to the assigned motion judge between 8:45 am – 9:30 am, Monday – Friday only to the email for the applicable calendar

Routine motions submitted after 9:30 am will not be processed until the following business day

Types of Routine Motions include, but are not limited to:

- Appoint special process server, leave to vacate defaults, leave to appear/answer/plead, entry of fully executed HIPAA orders, amending a pleading, filing an additional party (third-party complaint), leave to intervene on behalf of a worker's compensation carrier / public body claiming a lien, voluntary dismissal of certain parties (partial) or entire case, dismissal orders for settlements not involving those subject to the Joint Memorandum on Settlement Procedures

Notice, service, and e-filing of routine motions must comply with the above filing and service procedures

Regular Motions

The daily motion call (spindled motions, first time presentation) is suspended until further court order

Regular motions may be e-filed and submitted to the assigned motion judge at any time, with proper notice provided

All regular motions shall be emailed to the assigned motion judges at their calendar email address

Regular motions are all motions other than emergency or routine, as previously defined above

Types of Regular Motions include, but are not limited to:

- Addressing jurisdiction, validity and/or diligence of service of process, sufficiency of pleadings and exhibits, discovery, involuntary dismissal, objections, privileges, in camera inspections, etc.

All regular motions will be screened by the assigned judge for the need of a briefing schedule

- If no briefing schedule is needed, the assigned judge will notify parties and enter an order ruling on the motion
- If a briefing schedule is needed, follow the procedures set in the contested motion section below

#### Contested Motion Procedures

If any discovery is needed, prior to briefing a motion, the party requesting the discovery shall confer with opposing counsel, obtain an agreement to conduct such discovery, and shall submit an agreed order, providing a description of the discovery needed, and the time required to complete it

If no discovery is needed prior to briefing a motion, counsel shall confer and submit an agreed briefing schedule order

The standard briefing schedule is 28 days for a response, and 21 days for a reply, or as agreed by the parties, or set by order of court upon motion

Courtesy copies of all contested motions are to be emailed to the assigned email address for the applicable calendar

- Motion judges may request hard copies of courtesy copies, exhibits, records, briefs by regular mail or delivery, on a case-by-case basis, or as set forth in their standing orders

All rulings on contested motions will be by written order, unless otherwise determined by the assigned motion judge

#### Settlement and Dismissal Orders

Agreed orders for dismissal by settlement (partial or total), voluntary dismissal (partial or total, with no dispositive motions pending), agreed motions for good faith finding, etc., are to be submitted to the assigned calendar email addresses

All documents, other than the draft order, must be e-filed, prior to submission, except as provided in the Petitions to Approve Settlement section below

Notice, and service of draft orders of dismissal must comply with the above filing and service procedures

#### Petitions for Approval of Settlements

All petitions for settlement under the Wrongful Death Act, Survival Act, for Minors and Disabled Persons, must comply with the "Settlement Procedures" located on the [Law Division Homepage](#)

The petitions for approval of settlements and proposed orders must not be e-filed prior to submission, and must only be submitted in draft form, following the procedures for submitting draft and proposed orders

Notice of the submission of petitions for approval of settlement shall be provided to all counsel of record, with email addresses included

Petitions for approval of settlement which do not comply with this section will be rejected

Calendar	Judge	Email
A	O'Hara	<a href="mailto:LAW.CALAcc@cookcountyil.gov">LAW.CALAcc@cookcountyil.gov</a>
B	Gillespie	<a href="mailto:LAW.CALBcc@cookcountyil.gov">LAW.CALBcc@cookcountyil.gov</a>
C	Durkin	<a href="mailto:LAW.CALCcc@cookcountyil.gov">LAW.CALCcc@cookcountyil.gov</a>
D	Sheahan	<a href="mailto:LAW.CALDcc@cookcountyil.gov">LAW.CALDcc@cookcountyil.gov</a>
E	Flanagan	<a href="mailto:LAW.CALEcc@cookcountyil.gov">LAW.CALEcc@cookcountyil.gov</a>
F	Johnson	<a href="mailto:LAW.CALFcc@cookcountyil.gov">LAW.CALFcc@cookcountyil.gov</a>
H	Ehrlich	<a href="mailto:LAW.CALHcc@cookcountyil.gov">LAW.CALHcc@cookcountyil.gov</a>
R	Lawler	<a href="mailto:LAW.CALRcc@cookcountyil.gov">LAW.CALRcc@cookcountyil.gov</a>
X	O'Brien	<a href="mailto:LAW.CALXcc@cookcountyil.gov">LAW.CALXcc@cookcountyil.gov</a>
Z	Walker	<a href="mailto:LAW.CALZcc@cookcountyil.gov">LAW.CALZcc@cookcountyil.gov</a>
Emergency Duty Judge	O'Malley	<a href="mailto:Karen.OMalley@cookcountyil.gov">Karen.OMalley@cookcountyil.gov</a>

**Exhibit 2**



**From:** [Julie Pustilnik](#)  
**To:** [Lucas Sun](#); [LAW CALAcc \(OCJ\)](#)  
**Cc:** [Emani Evans](#); [Sean Murray](#); [Christine Kinnerk](#)  
**Subject:** [EXTERNAL] RE: Arney v. Sears- 20 L 012403 (Motion to Dismiss)  
**Date:** Thursday, June 3, 2021 1:37:18 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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Your Honor,

Defendant's Motion is primarily based upon successor corporation nonliability. However, there are four exceptions to successor corporate nonliability:

1. where there is an express or implied agreement of assumption;
2. where the transaction amounts to a consolidation or merger of the purchaser or seller corporation;
3. where the purchaser is merely a continuation of the seller; or
4. where the transaction is for the fraudulent purpose of escaping liability for the seller's obligations.

*Digiulio v. Goss Inten. Corp.*, 389 Ill. App. 3d 1052 (1st Dist. 2009).

The material facts necessary to examine those exceptions, such as the identity of officers, directors, management, business operations, etc., are not available to Plaintiff. Therefore, Plaintiff is requesting written discovery, document production, and potentially depositions on these issues, as is permissible under Illinois Supreme Court Rule 191(b), which allows parties to submit interrogatories, take depositions, or request documents in the context of answering a 2-619 Motion to dismiss.

Thank you again for your consideration of these matters,

Julie

**Julie Levinson Pustilnik**



225 West Wacker, Suite 1650, Chicago, Illinois 60606  
Tel: (312)586-1700 / Dir: (312)586-1717 / Fax: (312)586-1701  
[www.tpmblegal.com](http://www.tpmblegal.com)

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**From:** Lucas Sun <LSun@ohaganmeyer.com>

**Sent:** Thursday, June 3, 2021 10:21 AM

**To:** Julie Pustilnik <jpustilnik@tpmblegal.com>; LAW CALAcc (OCJ) <Law.Calacc@cookcountyil.gov>

**Cc:** Emani Evans <EEvans@ohaganmeyer.com>; Sean Murray <smurray@tpmblegal.com>; Christine Kinnerk <ckinnerk@tpmblegal.com>

**Subject:** Re: Arney v. Sears- 20 L 012403 (Motion to Dismiss)

Judge

Defendant would object at this point to this request as our motion is a 619.1. Perhaps if this Court were to find the 615 aspect were denied then this request could potentially be appropriate. However, as the motion is based on both 615/619, discovery would not be warranted yet if the 615 were granted.

Lucas Sun

ASSOCIATE ATTORNEY

One E Wacker Dr. | Suite 3400 | Chicago | IL | 60601

DIRECT 312.422.6154 | CELL 630.234.4645



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Philadelphia • Richmond • San Francisco • Washington D.C. • Wilmington, DE

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**From:** Julie Pustilnik <[jpustilnik@tpmblegal.com](mailto:jpustilnik@tpmblegal.com)>

**Sent:** Thursday, June 3, 2021 9:06 AM

**To:** LAW CALAcc (OCJ) <[Law.Calacc@cookcountyil.gov](mailto:Law.Calacc@cookcountyil.gov)>

**Cc:** Emani Evans <[EEvans@ohaganmeyer.com](mailto:EEvans@ohaganmeyer.com)>; Lucas Sun <[LSun@ohaganmeyer.com](mailto:LSun@ohaganmeyer.com)>; Sean Murray <[smurray@tpmblegal.com](mailto:smurray@tpmblegal.com)>; Christine Kinnerk <[ckinnerk@tpmblegal.com](mailto:ckinnerk@tpmblegal.com)>

**Subject:** [EXTERNAL] RE: Arney v. Sears- 20 L 012403 (Motion to Dismiss)

Good Morning Your Honor,

We have reviewed Defendant's Motion. In order to respond, Plaintiff requests leave to conduct written discovery on the issues raised in the Motion, and possibly take depositions based on what arises in this written discovery. We ask for 14 days to issue written, by 6/17/21.

Thank you,

Julie

**Julie Levinson Pustilnik**



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**From:** LAW CALAcc (OCJ) <[Law.Calacc@cookcountyil.gov](mailto:Law.Calacc@cookcountyil.gov)>

**Sent:** Thursday, May 27, 2021 8:57 AM

**To:** Julie Pustilnik <[jpustilnik@tpmblegal.com](mailto:jpustilnik@tpmblegal.com)>

**Cc:** Emani Evans <[EEvans@ohaganmeyer.com](mailto:EEvans@ohaganmeyer.com)>; Lucas Sun <[LSun@ohaganmeyer.com](mailto:LSun@ohaganmeyer.com)>; Sean Murray <[smurray@tpmblegal.com](mailto:smurray@tpmblegal.com)>; Christine Kinnerk <[ckinnerk@tpmblegal.com](mailto:ckinnerk@tpmblegal.com)>

**Subject:** Re: Arney v. Sears- 20 L 012403 (Motion to Dismiss)

Yes, please provide an email status to the Court on June 3 as to the plaintiff's position.

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**From:** Julie Pustilnik <[jpustilnik@tpmblegal.com](mailto:jpustilnik@tpmblegal.com)>

**Date:** Wednesday, May 26, 2021 at 3:51 PM

**To:** LAW CALAcc (OCJ) <[Law.Calacc@cookcountyil.gov](mailto:Law.Calacc@cookcountyil.gov)>

**Cc:** Emani Evans <[EEvans@ohaganmeyer.com](mailto:EEvans@ohaganmeyer.com)>, Lucas Sun <[LSun@ohaganmeyer.com](mailto:LSun@ohaganmeyer.com)>, Sean

Murray <[smurray@tpmblegal.com](mailto:smurray@tpmblegal.com)>, Christine Kinnerk <[ckinnerk@tpmblegal.com](mailto:ckinnerk@tpmblegal.com)>

**Subject:** RE: Arney v. Sears- 20 L 012403 (Motion to Dismiss)

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Thank you, Your Honor. Defendant's Motion with the accompanying exhibits was over 1200 pages. May we have 7 days, until June 3, 2021 to review the motion and the exhibits and determine how we wish to proceed?

Thank you,

Julie

**Julie Levinson Pustilnik**



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**From:** LAW CALAcc (OCJ) <[Law.Calacc@cookcountyil.gov](mailto:Law.Calacc@cookcountyil.gov)>

**Sent:** Wednesday, May 26, 2021 12:26 PM

**To:** Julie Pustilnik <[jpustilnik@tpmblegal.com](mailto:jpustilnik@tpmblegal.com)>

**Cc:** Emani Evans <[EEvans@ohaganmeyer.com](mailto:EEvans@ohaganmeyer.com)>; Lucas Sun <[LSun@ohaganmeyer.com](mailto:LSun@ohaganmeyer.com)>; Sean Murray <[smurray@tpmblegal.com](mailto:smurray@tpmblegal.com)>; Christine Kinnerk <[ckinnerk@tpmblegal.com](mailto:ckinnerk@tpmblegal.com)>

**Subject:** Re: Arney v. Sears- 20 L 012403 (Motion to Dismiss)

Of course, apologies for the confusion.

---

**From:** Julie Pustilnik <[jpustilnik@tpmblegal.com](mailto:jpustilnik@tpmblegal.com)>

**Date:** Wednesday, May 26, 2021 at 11:04 AM

**To:** LAW CALAcc (OCJ) <[Law.Calacc@cookcountyil.gov](mailto:Law.Calacc@cookcountyil.gov)>

**Cc:** Emani Evans <[EEvans@ohaganmeyer.com](mailto:EEvans@ohaganmeyer.com)>, Lucas Sun <[LSun@ohaganmeyer.com](mailto:LSun@ohaganmeyer.com)>, Sean Murray <[smurray@tpmblegal.com](mailto:smurray@tpmblegal.com)>, Christine Kinnerk <[ckinnerk@tpmblegal.com](mailto:ckinnerk@tpmblegal.com)>

**Subject:** RE: Arney v. Sears- 20 L 012403 (Motion to Dismiss)

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Good morning Your Honor,

Apologies, I was not copied on the e-mail from Defendant to the Court. I have reached out to

Defense Counsel for a copy of the Motion, and it was just forwarded to me. May I have a brief opportunity to review the Motion before responding?

Thank you,

Julie Pustilnik

**Julie Levinson Pustilnik**



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**From:** "LAW CALAcc (OCJ)" <[Law.Calacc@cookcountyil.gov](mailto:Law.Calacc@cookcountyil.gov)>

**Date:** May 26, 2021 at 10:29:43 AM CDT

**To:** Emani Evans <[EEvans@ohaganmeyer.com](mailto:EEvans@ohaganmeyer.com)>

**Cc:** Lucas Sun <[LSun@ohaganmeyer.com](mailto:LSun@ohaganmeyer.com)>, Sean Murray <[smurray@tpmblegal.com](mailto:smurray@tpmblegal.com)>

**Subject: Re: Arney v. Sears- 20 L 012403 (Motion to Dismiss)**

Plaintiff's counsel: What is your position on the motion?

---

**From:** Emani Evans <[EEvans@ohaganmeyer.com](mailto:EEvans@ohaganmeyer.com)>

**Date:** Wednesday, May 26, 2021 at 9:57 AM

**To:** LAW CALAcc (OCJ) <[Law.Calacc@cookcountyil.gov](mailto:Law.Calacc@cookcountyil.gov)>

**Cc:** Lucas Sun <[LSun@ohaganmeyer.com](mailto:LSun@ohaganmeyer.com)>, 'smurray@tpmblegal.com' <[smurray@tpmblegal.com](mailto:smurray@tpmblegal.com)>

**Subject:** Arney v. Sears- 20 L 012403 (Motion to Dismiss)

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Good morning Judge Ohara,

Attached please find the Defendant's Motion to Dismiss Plaintiff's Complaint.

Counsel, to respond or object to this Motion, please email response or objection to [LAW.CALAcc@cookcountyil.gov](mailto:LAW.CALAcc@cookcountyil.gov) after 11:00 AM on the date set forth above, with a cc to all attorneys of record as listed here: If no response or objection is emailed before 4:00 PM on the date set forth above, the Court will rule on the Motion and enter an order.

Thank you,

**Emani Evans**

Legal Assistant

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